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Republic of the Philippines  
Supreme Court  
Manila

EN BANC

ENGINEER ALEX C. PAGUIO, in his capacity as General Manager of the Pagsanjan Water District, ANGELINE R. AGUILAR, Administrative Division Manager, EDITA B. ABARQUEZ, Board of Director Secretary, MARIFEL B. PABILONIA, Board of Director Chairperson, NINA P. VELASCO, BOD Vice Chairperson, FRED V. CAPISTRANO, Board of Director Chairman, and ANGELITO T. BOMBAY, Board of Director Vice Chairman,

Petitioners,

- versus -

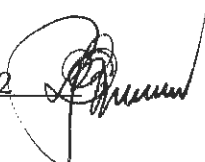
COMMISSION ON AUDIT, NILDA M. BLANCO, Commission on Audit Regional Director, Region IV-A, MARIO A. CORCEGA, Audit Team Leader, and WILHELMINA R. CABUHAT, Supervising Auditor, Audit Team 20, Group F-Laguna Province,  
Respondents.

G.R. No. 242644

Present:

GESMUNDO, C.J.,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,\*\*  
ROSARIO,  
LOPEZ, J.,  
DIMAAMPAO,  
MARQUEZ,  
KHO, JR., and  
SINGH,\*\*\* JJ.

Promulgated:

October 18, 2022 

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DECISION

\* On Official leave.  
\*\* On Official business.  
\*\*\* On Official business.

**LOPEZ, J., J.:**

This Court resolves the Petition for Review on *Certiorari*<sup>1</sup> filed under Rule 65, in relation to Rule 64, of the Rules of Court seeking the nullification of the Commission on Audit's (*Commission*) Decision No. 2018-187<sup>2</sup> dated January 29, 2018. The assailed decision denied petitioners', Alex C. Paguio (*Paguio*), Angeline R. Aguilar (*Aguilar*), Edita B. Abarquez (*Abarquez*), Marifel B. Pabilonia (*Pabilonia*), Nina P. Velasco (*Velasco*), Fred V. Capistrano (*Capistrano*), and Angelito T. Bombay (*Bombay*) (*Paguio, et al.*), petition for review in COA CP Case No. 2013-431 and affirmed Notice of Disallowance No. 2012-100-002 (09 & 10) dated May 10, 2012<sup>3</sup> (*subject Notice of Disallowance*) on the payment of Extraordinary and Miscellaneous Expenses to petitioner Paguio as the General Manager of Pagsanjan Water District.

**The Antecedents**

The petitioners are all officials of Pagsanjan Water District, a government-owned and controlled corporation, and a local water utility operating in the Municipality of Pagsanjan, Laguna. Paguio is the General Manager and Aguilar is the Administrative Division Manager. Meanwhile, petitioners Abarquez, Pabilonia, Velasco, Capistrano, and Bombay are members of Pagsanjan Water District's Board of Directors (*Board*).<sup>4</sup>

On January 25, 2005, Pagsanjan Water District's Interim Board issued Board Resolution No. 04, series of 2005,<sup>5</sup> authorizing the payment of Extraordinary and Miscellaneous Expenses to its General Manager in the amount of PHP 13,000.00 per month effective January 1, 2005. Subsequently, under Board Resolution No. 136, series of 2006,<sup>6</sup> the said allowance was increased to PHP 18,000.00 per month, which the General Manager regularly received.

On June 2, 2011, Audit Observation Memorandum No. 2011-100-005 (09 & 10)<sup>7</sup> was issued by respondents Mario A. Corcega (*Corcega*) and Wilhelmina R. Cabuhat (*Cabuhat*) in their capacities as the Commission's Audit Team Leader and Supervising Auditor, respectively. Addressed to petitioners Paguio and Aguilar, the Audit Observation Memorandum indicated that an audit was conducted on the Extraordinary and Miscellaneous Expenses of Pagsanjan Water District for the period of January 2009 to

<sup>1</sup> *Rollo*, pp. 3-22.

<sup>2</sup> *Id.* at 26-33.

<sup>3</sup> *Id.* at 34-35.

<sup>4</sup> *Id.* at 27.

<sup>5</sup> *Id.* at 49.

<sup>6</sup> *Id.* at 50-51.

<sup>7</sup> *Id.* at 52-55.

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December 31, 2010. It was observed that an allowance of PHP 18,000.00 per month, amounting to PHP 432,000.00, was paid to Paguio during the said period and charged to Extraordinary and Miscellaneous Expenses,<sup>8</sup> violating Section 25 of the 2009 General Appropriations Act<sup>9</sup> and Section 28 of the 2010 General Appropriations Act.<sup>10</sup> Additionally, instead of being paid through reimbursements, the payments of the said allowance were made on a commutable basis and supported by certifications, contravening Circular No. 2006-01 dated January 3, 2006 issued by the Commission. The Audit Observation Memorandum also stated that the actual expenditures for Extraordinary and Miscellaneous Expenses were paid out of the funds for regular operating expenses, such as seminars, official entertainments, foods for guest and public relations. It advised the management of Pagsanjan Water District to refrain from paying the said allowance and refund the amount audited for lack of legal basis.<sup>11</sup>

On May 10, 2012, the subject Notice of Disallowance was issued by Corcega and Cabuhat. It disallowed in audit the 2009 and 2010 payments of Extraordinary and Miscellaneous Expenses to Paguio in the total amount of PHP 432,000.00 and reiterated the findings on the previously issued Audit Observation Memorandum.<sup>12</sup>

Those held liable in the subject Notice of Disallowance were: (1) Paguio for being the claimant and the agency head who approved the payments; (2) Aguilar as the head of the division responsible for the pre-audit of the disbursement and certifying that the supporting documents were complete and proper; and (3) Abarquez, Pabilonia, Velasco, Capistrano, and Bombay in their capacities as members of the Board of Directors that approved the payments of the Extraordinary and Miscellaneous Expenses to Paguio through board resolutions and inclusion in the corporate budget.<sup>13</sup>

Aggrieved, Paguio, et al. appealed before the Commission's Regional Office No. IV-A,<sup>14</sup> arguing that the grant of the Extraordinary and Miscellaneous Expenses was grounded on the Board's authority to fix the compensation of Pagsanjan Water District's General Manager under Republic Act No. 9286<sup>15</sup> and on the basis of Paguio's position as head of an agency. They also submitted that the issuance of Circular No. 2006-01 validated the grant of the said allowance by the governing boards of government-owned and controlled corporations like Pagsanjan Water District and that such allowance was made in good faith.

<sup>8</sup> Id. at 52.

<sup>9</sup> Republic Act No. 9524 (2009).

<sup>10</sup> Republic Act No. 9970 (2010).

<sup>11</sup> *Rollo*, pp. 53-54.

<sup>12</sup> Id. at 27.

<sup>13</sup> Id. at 35.

<sup>14</sup> Id. at 36-48.

<sup>15</sup> An Act Further Amending Presidential Decree No. 198 (2004).

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In her Decision No. 2013-30<sup>16</sup> dated October 21, 2013, respondent Regional Director Nilda M. Blanco denied Paguio, et al.'s appeal, the dispositive portion of which states:

Viewed in the light of the foregoing, the herein Appeal is DENIED. Accordingly, [Notice of Disallowance] No. 2012-100-002-(09 & 10) dated May 10, 2012 is AFFIRMED.<sup>17</sup>

Advancing the same arguments, Paguio, et al. subsequently sought relief before the Commission Proper *via* a petition for review.<sup>18</sup>

However, in the assailed Decision dated January 29, 2018,<sup>19</sup> the petition was denied when the Commission Proper held that notwithstanding the power of the Board to fix the compensation of the General Manager, it is still required to report and seek the approval of the President, through the Department of Budget and Management (*DBM*), on position classification, salary rates, levels of allowances, projects and other *honoraria*, overtime rates, and other forms of compensation and fringe benefits pursuant to Section 6 of Presidential Decree No. 1597.<sup>20</sup> The same is likewise reiterated in Section 59 of the General Provisions of the 2010 General Appropriations Act.<sup>21</sup>

The Commission Proper also noted that under the 2009 and 2010 General Appropriations Acts, the lowest position entitled to the Extraordinary and Miscellaneous Expenses of PHP 16,000.00 per annum is one with a salary grade of at least 26, and Paguio holds a position with a salary grade of 24. The Commission Proper likewise pointed out that according to an opinion by the *DBM*'s Compensation and Position Classification Bureau, because the key officials of local water districts are not equivalent in rank to any of the officials in Section 24 of the 1999 General Appropriations Act, the said officials are not entitled to Extraordinary and Miscellaneous Expenses. It also ruled that Paguio, et al. have violated the guidelines set forth in Circular No. 2006-01, because Paguio failed to submit the required receipts.<sup>22</sup>

Affirming the liability of Paguio, et al., the Commission Proper held that even assuming Paguio received the Extraordinary and Miscellaneous Expenses in good faith, he is still duty-bound to return the same based on the principle of *solutio indebiti*. Meanwhile, the Board and officials of Pagsanjan

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<sup>16</sup> *Rollo*, pp. 63–67.

<sup>17</sup> *Id.* at 67.

<sup>18</sup> *Id.* at 27–28.

<sup>19</sup> *Id.* at 26–33.

<sup>20</sup> Further Rationalizing the System of Compensation and Position Classification in the National Government (1978).

<sup>21</sup> *Rollo*, pp. 28–29.

<sup>22</sup> *Id.* at 30.

Water District who authorized, approved, and/or certified the disallowed payments to Paguio are jointly and solidarily liable for the illegal disbursement of public funds pursuant to Section 103 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines.<sup>23</sup> The dispositive portion of the assailed Decision reads:

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Regional Office No. IV-A Decision No. 2013-39 dated October 21, 2013 and Notice of Disallowance No. 2012-100-002 (2009 and 2010) dated May 10, 2012 on the payment of Extraordinary and Miscellaneous Expenses to Engineer Alex C. Paguio, General Manager, *et al.*, all of Pagsanjan Water District, Pagsanjan, Laguna, for calendar years 2009 and 2010, in the total amount of PHP 432,000.00, are **AFFIRMED**.<sup>24</sup>

Hence, this petition.

### Issues

#### I.

Whether the Commission Proper committed grave abuse of discretion amounting to lack or excess of jurisdiction when it disallowed the grant of Extraordinary and Miscellaneous Expenses to the General Manager of Pagsanjan Water District.

#### II.

Whether the Commission Proper committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the General Manager, the Administrative Division Manager and the members of the Board of Directors of Pagsanjan Water District are liable to refund the amount for the grant of Extraordinary and Miscellaneous Expenses.

Paguio, et al. maintain that the grant of Extraordinary and Miscellaneous Expenses is valid based on the authority granted to the Board of Pagsanjan Water District to fix the compensation of the General Manager pursuant to Republic Act No. 9286. They likewise argue that Paguio, as the General Manager and head of a government-owned and controlled corporation like the said local water district, is entitled to the said allowance by reason of his tremendous responsibilities and obligations in managing and operating his respective office. They contend that the Commission Proper's ruling against the entitlement because the General Manager's salary grade is below salary grade 26 is a disservice and prejudicial, as it violates the

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<sup>23</sup> Id. at 31.

<sup>24</sup> Id. at 32.



uniformity and equal protection clause of the Constitution on privileges and benefits being enjoyed by heads of agencies, particularly in comparison with general managers of other local water districts with salary grade 26. The petitioners further argue that Circular No. 2006-01 “invariably” empowers governing boards of the government-owned and controlled corporations, like that of Pagsanjan Water District, to appropriate such amount as they may deem proper for Extraordinary and Miscellaneous Expenses.<sup>25</sup> In this regard, they submit that the said circular was duly complied with, invoking the Commission’s Circular No. 89-300 dated March 21, 1989, which, in lieu of receipts and other documents evidencing disbursements, allows the submission of certifications that the supposed expenses were incurred for the purpose contemplated by law, or by reason of the recipient’s position. Arguing against their liability under the subject Notice of Disallowance and obligation to return the amount stated therein, the petitioners maintain that Paguio merely received the payments believing he is entitled thereto, while the other charged officers of the Pagsanjan Water District granted the same in good faith and in accordance with applicable laws and regulations.

In its Comment,<sup>26</sup> the COA argue that the General Manager of Pagsanjan Water District is not entitled to Extraordinary and Miscellaneous Expenses pursuant to the 2009 and 2010 General Appropriations Acts. They likewise contend that there is no discrimination in the Commission Proper’s ruling as there is a substantial distinction between general managers of local water districts with salary grade 24 and those with salary grade 26. The COA also posited that even assuming that Paguio is entitled to the said allowance, the documents presented fell short of what is required under the Commission’s Circular No. 2006-01. They likewise submit that Paguio, et al. did not act in good faith as they must have had full knowledge of the limitation on the amount of the Extraordinary and Miscellaneous Expenses under the applicable General Appropriations Acts and the existence of the Commission’s Circular No. 2006-01.

### **Ruling of this Court**

Prefatorily, this Court notes that Paguio, et al. did not first move for reconsideration of the assailed Decision prior to filing the instant petition.

*A motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari; exceptions*

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<sup>25</sup> Id. at 15.

<sup>26</sup> Id. at 121–128.

It has long been settled that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. The objective of the mandate is to grant the lower court, or tribunal the opportunity to correct any actual or perceived error imputed to it.<sup>27</sup>

In *Siok Ping Tan v. Subic Bay Distribution, Inc.*,<sup>28</sup> however, this Court reiterated that the foregoing rule admits of exceptions:

The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.<sup>29</sup>

In *Philippine International Trading Corporation v. Commission on Audit*,<sup>30</sup> the prior filing of a motion for reconsideration was no longer required as the issue presented was purely of law and the question raised has already been discussed in the decision of the Commission's Director and the Commission on Audit.<sup>31</sup>

Similarly, the circumstances of the instant case fall under the second exception. The contentions of petitioners herein, pertaining to the legality of the grant of Extraordinary and Miscellaneous Expenses and their good faith in authorizing the same, are precisely the same arguments that they have advanced and were eventually discussed by respondents in their appeal and petition for review. Thus, a motion for reconsideration may be dispensed with.

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<sup>27</sup> *Almario-Templonuevo v. Office of the Ombudsman*, 811 Phil. 686, 695 (2017).

<sup>28</sup> 653 Phil. 124 (2010).

<sup>29</sup> *Id.* at 136-137.

<sup>30</sup> *Philippine International Trading Corp. v. Commission on Audit*, 821 Phil. 144 (2017).

<sup>31</sup> *Id.* at 153.

The foregoing notwithstanding, this Court dismisses the petition.

*It is only when the Commission on Audit acts without or in excess of jurisdiction, or with grave abuse of discretion equivalent to lack or excess of jurisdiction, may the Supreme Court strike down its decision*

Regarded as the guardian of public funds, the Commission on Audit is constitutionally clothed with broad powers over all accounts relative to the revenue, expenditures, as well as uses of funds and property of the Government. This function includes the sole authority to define the scope of its audit and examination, institute techniques and methods of their review, and promulgate rules and regulations in connection with auditing and accounting practices.<sup>32</sup> In line with this, the Commission is vested with enough latitude to determine, prevent, and disallow expenditures of government funds that it finds irregular, unnecessary, excessive, extravagant or unconscionable.<sup>33</sup> Undoubtedly, it is accorded with complete discretion in the exercise of its constitutional mandate to examine and audit expenditures of public funds, particularly those which are beyond what is sanctioned by law.<sup>34</sup>

Parenthetically, this Court has consistently adhered to the general policy of sustaining the decisions of administrative authorities, especially a constitutionally created body like the Commission, on the basis of not just the separation of powers, but also of their presumed expertise in the laws they are enjoined to enforce. It is only when the Commission's actions are attended by lack or excess of jurisdiction or tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court consider a Rule 65 petition for *certiorari* assailing such tribunal's decision.<sup>35</sup>

There is grave abuse of discretion when there has been an evasion of a positive duty, or a virtual refusal to perform a duty prescribed by law or to act in accordance with law, such as when a judgment was not rendered based on the law and evidence, but on caprice, whim, and despotism.<sup>36</sup>

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<sup>32</sup> *Yap v. Commission on Audit*, 633 Phil. 174, 189 (2010), citing the 1987 Constitution, Article IX, Sec. 2(1) and (2).

<sup>33</sup> *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 138 (2017).

<sup>34</sup> *Technical Education and Skills Development Authority v. Commission on Audit*, 753 Phil. 434, 441 (2015).

<sup>35</sup> *Supra* note 26, at 195.

<sup>36</sup> *Galvante v. Hon. Casimiro*, 575 Phil. 324, 335 (2008) [Per J. Austria-Martinez, Third Division].

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Applying the foregoing, this Court finds that the Commission Proper did not gravely abuse its discretion in affirming the disallowance of the grant of Extraordinary and Miscellaneous Expenses, the same having been made on the basis of cogent legal grounds.

*While the board of directors of a local water district has the power to fix the compensation of its General Manager, such must be fixed in accordance with the position classification under the Salary Standardization Law*

Paguio, et al. anchor the grant of Extraordinary and Miscellaneous Expenses on the authority of the Board of Pagsanjan Water District to fix the compensation of its General Manager under Section 23 of Presidential Decree No. 198, otherwise known as The Provincial Water Utilities Act of 1973, as amended by Republic Act No. 9286, which provides:

Sec. 23. The General Manager. - At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall not be removed from office, except for cause and after due process.

Paguio, et al.'s argument is untenable.

Section 23 of Presidential Decree No. 198, as amended, does not grant the board of directors of a local water district the unbridled power to fix the compensation of its general manager.

Paguio, et al.'s contention has also been raised in the case of *Engr. Manolito P. Mendoza v. Commission on Audit*<sup>37</sup> (*Mendoza*) where the petitioner therein posited that Section 23 of Presidential Decree 198, as amended, justifies his salary, the excess of which was disallowed in audit by the Commission for not being consistent with the rate prescribed under Republic Act No. 6758, otherwise known as the Compensation and Position Classification Act of 1989 or the Salary Standardization Law.<sup>38</sup>

In *Mendoza*, this Court reiterated that the Salary Standardization Law applies to all government positions, including those in government-owned and controlled corporations.<sup>39</sup> However, an exemption to the rule exists where the

<sup>37</sup> 717 Phil. 491 (2013) [Per J. Leonen, *En Banc*].

<sup>38</sup> *Id.* at 518-519.

<sup>39</sup> *Id.* at 517.

said corporation's charter explicitly exempts it from the coverage of the Salary Standardization Law.<sup>40</sup>

In view thereof, this Court in *Mendoza* found that despite the amendment of Presidential Decree No. 198 through Republic Act No. 9286 on April 2, 2004, no such exemption from the coverage of the Salary Standardization Law was expressly granted to the position of general manager of local water districts. This Court explained thusly:

We are not convinced that Section 23 of Presidential Decree No. 198, as amended, or any of its provisions, exempts water utilities from the coverage of the Salary Standardization Law. In statutes subsequent to Republic Act No. 6758, Congress consistently provided not only for the power to fix compensation but also the agency's or corporation's exemption from the Salary Standardization Law. If Congress had intended to exempt water utilities from the coverage of the Salary Standardization Law and other laws on compensation and position classification, it could have expressly provided in Presidential Decree No. 198 an exemption clause similar to those provided in the respective charters of the Philippine Postal Corporation, Trade Investment and Development Corporation, Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

Congress could have amended Section 23 of Presidential Decree No. 198 to expressly provide that the compensation of a general manager is exempted from the Salary Standardization Law. However, Congress did not. Section 23 was amended to emphasize that the general manager "shall not be removed from office, except for cause and after due process."

This does not mean that water utilities cannot fix the compensation of their respective general managers. Section 23 of Presidential Decree No. 198 clearly provides that a water utility's board of directors has the power to define the duties and fix the compensation of a general manager. However, the compensation fixed must be in accordance with the position classification system under the Salary Standardization Law.<sup>41</sup> (Citations omitted)

Accordingly, a local water district's board of directors maintains the power to fix the compensation of its general manager, provided that such compensation is in accordance with the provisions of the Salary Standardization Law.

Since the position of general manager is covered by the Salary Standardization Law, it follows that the same is covered by the provisions of

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<sup>40</sup> Id.

<sup>41</sup> Id. at 518-519.

the said law pertaining to the integration of allowances,<sup>42</sup> particularly, Section 12 thereof, which states:

**Section 12. Consolidation of Allowances and Compensation.** - All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.<sup>43</sup>

In the instant case, the Commission Proper pointed out that prior to the grant of the Extraordinary and Miscellaneous Expenses, the Board of Pagsanjan Water District should have obtained the prior approval of the President, through the DBM, pursuant to Section 6 of Presidential Decree No. 1597. Significantly, however, the said provision has been superseded by Section 12 of the Salary Standardization Law as this Court discussed in *Maritime Industry Authority v. Commission on Audit*, thus:<sup>44</sup>

The consolidation of allowances in the standardized salary in Section 12 of Republic Act No. 6758 is a new rule in the Philippine position classification and compensation system. The previous laws on standardization of compensation of government officials and employees do not have this provision.

Presidential Decree No. 985, as amended by Presidential Decree No. 1597, the law prior to Republic Act No. 6758, repealed all laws, decrees, executive orders, and other issuances or parts thereof that authorize the grant of allowances of certain positions and employees. Under Presidential Decree No. 985, allowances, honoraria, and other fringe benefits may only be granted to government employees upon approval of the President with the recommendation of the Commissioner of the Budget Commission.

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The clear policy of Section 12 is “to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them.” Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:

<sup>42</sup> *Zamboanga City Water District v. Commission on Audit*, 779 Phil. 225, 242 (2016).

<sup>43</sup> Republic Act No. 6758, Section 12.

<sup>44</sup> 750 Phil. 288 (2015).

1. representation and transportation allowances;
2. clothing and laundry allowances;
3. subsistence allowance of marine officers and crew on board government vessels;
4. subsistence allowance of hospital personnel;
5. hazard pay; and
6. allowances of foreign service personnel stationed abroad.

In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.<sup>45</sup> (Citations omitted)

Accordingly, the prevailing rule is that the allowances of employees covered by the Salary Standardization Law are deemed included in the standardized salary, except: (1) representation and transportation allowance; (2) clothing and laundry allowance; (3) subsistence allowance of marine officers and crew on board government vessels; (4) subsistence allowance of hospital personnel; (5) hazard pay; (6) allowance of foreign service personnel stationed abroad; and (6) such other allowances as the DBM may determine.

Notably, the Extraordinary and Miscellaneous Expenses granted by the Board of Pagsanjan Water District is not among the listed exemptions to the integrated allowances under the Salary Standardization Law. Neither is there any showing that the said allowance was determined by the DBM as one which may be granted to the General Manager of Pagsanjan Water District.

Verily, the mere grant of authority to the board of directors of a local water district to fix the compensation of the general manager does not amount to an unrestrained prerogative to grant salary and allowances without complying with the foregoing legislative enactment.

Anent Paguio, et al.'s contention that Circular No. 2006-01 validated the grant of Extraordinary and Miscellaneous Expenses, the same is without merit.

Circular No. 2006-01 prescribes guidelines on the disbursement of Extraordinary and Miscellaneous Expenses and other similar expenses in government-owned and controlled corporations and/or government financial institutions and their subsidiaries. While it recognizes that the governing boards of such entities are empowered to appropriate such amounts as they may deem appropriate for the said allowance,<sup>46</sup> the authority is qualified.

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<sup>45</sup> Id. at 313-315.

<sup>46</sup> Part I of Commission on Audit Circular No. 2006-01 (2006).  
I. RATIONALE

Under Item No. 1, Part III of the same circular pertaining to Audit Guidelines, it indicates:

### III. AUDIT GUIDELINES

1. The amount of extraordinary and miscellaneous expenses, as authorized in the corporate charters of GOCCs/GFIs, shall be the ceiling in the disbursement of these funds. Where no such authority is granted in the corporate charter and the authority to grant extraordinary and miscellaneous expenses is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements.<sup>47</sup>

Clearly, the authority of a government-owned and controlled corporation's board of directors to appropriate amounts for Extraordinary and Miscellaneous Expenses must emanate from said corporation's respective charter. In the event that there is no such authority in its corporate charter, the governing board may refer to the General Appropriations Act.

In this connection, there is nothing in Presidential Decree No. 198, as amended, the corporate charter of Pagsanjan Water District, that authorizes the Board thereof to grant the Extraordinary and Miscellaneous Expenses in favor of its General Manager. Considering this, this Court now refers to the General Appropriations Act.

The grant of the Extraordinary and Miscellaneous Expenses in question is provided for under Section 25 of the 2009 General Appropriations Act and Section 28 of the 2010 General Appropriations Act. Both provisions are similarly worded as follows:

[E]xtraordinary and Miscellaneous Expenses. Appropriations authorized herein may be used **for extraordinary expenses of the following officials and those of equivalent rank as may be authorized by the DBM**, not exceeding:

- (a) ₱220,000 for each Department Secretary;
- (b) ₱90,000 for each Department Undersecretary;
- (c) ₱50,000 for each Department Assistant Secretary;
- (d) ₱38,000 for each head of bureau or organization of equivalent rank, and for each head of a Department Regional Office;

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Governing boards of government-owned and controlled corporations/ government financial institutions (GOCCs/GFIs) are invariably empowered to appropriate through resolution such amounts as they deem appropriate for extraordinary and miscellaneous expenses. x x x

<sup>47</sup> Id.

(e) ₱22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and

f) ₱16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.<sup>48</sup>

Undoubtedly, the above provisions dictate that only those officials named therein or the officers equivalent in rank, as may be authorized by the DBM, are entitled to claim reimbursement for Extraordinary and Miscellaneous Expenses in the amounts not exceeding those provided.

It is evident that a general manager of a local water district is not among those public officers mentioned. Paguio, et al. likewise failed to prove that the said position has been authorized by the DBM as an officer equivalent in rank with the officials listed. Thus, there is no legal basis for the grant of Extraordinary and Miscellaneous Expenses to Paguio and he is not entitled to the same.

Paguio, et al. submit that the classification of salary grade, more particularly salary grade 26 to be entitled to the said allowance, violates the uniformity and equal protection clause of the Constitution on privileges and benefits being enjoyed by a head of an agency like Paguio in comparison with general managers of other local water districts with salary grade 26 or higher. The conjecture is erroneous.

The constitutional right of equal protection of the laws is not absolute and allows for reasonable classification. If classes or groups are distinguished by substantial distinction that account for real or actual differences, one class may be treated or regulated differently from another.<sup>49</sup>

At the time that the subject payments were made to Paguio in 2009 and 2010, Pagsanjan Water District was classified as a medium local water district with the position of general manager being salary grade 24.<sup>50</sup> Such distinction in comparison to general managers of other local water districts is neither unreasonable nor unjustified.

Between 1997 and 2011, local water districts were classified into six categories: small, average, medium, big, large, and very large water districts on the basis of the Local Water District Manual on Categorization/Re-categorization. The same manual served as a guide in determining the Organizational Structure, Staffing Pattern and position classification for every

<sup>48</sup> Republic Act No. 9524 (2009), Section 25; Republic Act No. 9970 (2010) Section 28.

<sup>49</sup> *Tiu v. CA*, 361 Phil. 229, 241 (1999).

<sup>50</sup> *Rollo*, p. 38.

category of water district.<sup>51</sup> Several factors were considered in classifying these local water districts, which includes personnel, fixed assets, revenues and investments. The criteria also included the size of resources, financial capability in satisfying operating requirements, revenue generation, and scope or complexity of operations.<sup>52</sup>

Verily, there exists a substantial distinction between a general manager of a medium local water district and those in big, large, and very large water districts.

Adhering to the provisions of law and the foregoing auditing guidelines, the Commission Proper correctly sustained the disallowance of the grant of Extraordinary and Miscellaneous Expenses.

Assuming *arguendo* that the subject position is entitled to receive such an allowance, the payment of the same on the basis of certifications and through commutation cannot be countenanced. Items No. 2 and 3, Part III of the said circular requires that the payment of Extraordinary and Miscellaneous Expenses shall be strictly on a reimbursable or non-commutable basis and that a claim for reimbursement shall be supported by receipts and/ or other documents evidencing disbursements.<sup>53</sup>

It is undisputed that the payments of Extraordinary and Miscellaneous Expenses to Paguio were not made on a reimbursable basis.<sup>54</sup> This alone constitutes a clear violation of the prescribed auditing guidelines.

The reimbursement mandated by Circular No. 2006-01 also requires the submission of receipts and/or other documents evidencing reimbursements, which petitioners likewise failed to observe. In a bid to justify the breach of regulation, petitioners submitted monthly certifications and invoke Circular No. 89-300, which allows the submission of such document, executed by the official concerned, certifying that the expenses sought to be reimbursed have been incurred for the purposes contemplated under the law or by reason of the official's position.<sup>55</sup>

<sup>51</sup> Revised Local Water District Manual on Categorization, Re-categorization and Other Related Matters (2011).

<sup>52</sup> Id.

<sup>53</sup> **III. Audit Guidelines**

x x x x

2. Payment of these expenditures shall be strictly on non-commutable or reimbursable basis;

3. The claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements; and

x x x x

<sup>54</sup> *Rollo*, p. 27.

<sup>55</sup> **III. GENERAL AUDIT PRINCIPLE AND GUIDELINES: -**

x x x x

4. The entitlement to the benefit provided under the General Appropriations Act shall be on a strictly non-commutable or reimbursement basis. The corresponding claim for reimbursement of such

*First*, Circular No. 89-300 is not applicable in the instant case, as it expressly covers appropriations under the General Appropriations Act for National Government Agencies as opposed to the coverage of Circular No. 2006-01 which applies to government financial institutions and government-owned and controlled corporations such as Pagsanjan Water District.<sup>56</sup> The variance in coverage is by no means arbitrary. In *Espinas v. Commission on Audit*,<sup>57</sup> (*Espinas*) this Court explained that the difference in regulation between the two issuances is attributed to a means by the Commission to impose nuanced control measures to check if the disbursements of Extraordinary and Miscellaneous Expenses by government-owned and controlled corporations, government financial institutions, and their subsidiaries constitute irregular, unnecessary, excessive, extravagant, or unconscionable government expenditures. This takes into consideration that unlike the Extraordinary and Miscellaneous Expenses of National Government Agencies which are appropriated in the annual General Appropriations Act, the Extraordinary and Miscellaneous Expenses of government-owned and controlled corporations, government finance institutions and their subsidiaries are allocated by their own governing boards.<sup>58</sup>

*Second*, in the absence of receipts, certifications alone do not fall within the requirement set forth under Circular No. 2006-01. While the said circular allows the submission of *other documents evidencing disbursements*, this implies that a supporting document must necessarily substantiate the “paying out of an account payable” or a disbursement in order to fall within the purview of Item 3, Part III of Circular No. 2006-01.<sup>59</sup> In *National Transmission Corporation v. Commission on Audit*<sup>60</sup> (*Transco*) this Court further expounded on what would qualify a document as sufficient evidence of payment or disbursement, to wit:

Clearly, a certification may or may not constitute an adequate proof of disbursement. To be admitted as a sufficient evidence of payment, the certification presented by the [government-owned and controlled corporation] must establish “the paying out of an account payable,” or a disbursement. It must reflect the transaction details that are typically found in a receipt which is the best evidence of the fact of payment. It must specify the nature and description of the expenditures, amount of the expenses, and the date and place they were incurred. This interpretation holds true even

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expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under Section 19 and other related sections of RA 6688 (or similar provision in subsequent General Appropriations Acts) in relation to or by reason of his position. In the case of miscellaneous expenses incurred for an office specified in the law, such certification shall be executed solely by the head of the office.

<sup>56</sup> *Rollo*, p. 104.

<sup>57</sup> 731 Phil. 67 (2014).

<sup>58</sup> *Id.* at 80–81.

<sup>59</sup> *Id.* at 78.

<sup>60</sup> G.R. No. 244193, November 10, 2020.



with just a plain reading of Item III of [Commission on Audit] Circular No. 2006-001, since the phrase “other documents” is qualified by the phrase “evidencing disbursements.” A sweeping and general statement that expenditures were incurred by some officials within a certain month does not, in any way, satisfy the condition contemplated in the circular. Unfortunately, in this case, the certifications submitted by TransCo officials merely provided a simple declaration from each payee that “the expenses have been incurred for any of the purposes contemplated under the law or regulation ([Government Appropriations Act and Commission on Audit] Circular No. 89-300) in relation to or by reason of my position.” Hence, the Court is not inclined to accept such certification as valid evidence of disbursement.<sup>61</sup> (Citations omitted)

Here, this Court notes that the certifications which purportedly supported the payments of Extraordinary and Miscellaneous Expenses to Paguio were not attached to the instant petition. This impels this Court to uphold the finding of the Commission that the certifications submitted did not meet the requirements set by Circular No. 2006-01.

*Liability to return the disallowed amount*

With the propriety of the subject Notice of Disallowance now settled, this Court now proceeds to determine the petitioners’ liability to return the disallowed amount.

Paguio, et al. reiterated that Paguio merely received the disallowed payments believing he is entitled thereto and that they granted the same in good faith in accordance with applicable laws and regulations.

This Court is not convinced.

Where transactions are disallowed by the Commission, the liability of the concerned public officials to return the amounts involved therein hinges on the prevailing Rules on Return as laid down in *Madera v. Commission on Audit*,<sup>62</sup> (*Madera*) to recall:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

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<sup>61</sup> Id.

<sup>62</sup> G.R. No. 244128, September 8, 2020 [Per J. Caguioa, *En Banc*].

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

(a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code.

(b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Section 2c and 2d.

(c) Recipients—whether approving or certifying officers or mere passive recipients—are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

(d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.<sup>63</sup>

As this Court outlined in *Madera*, every public official or employee authorizing or making illegal expenditures, or taking part therein, as well as every person receiving such payment shall be jointly and severally liable to the government for the full amount so paid and or received.<sup>64</sup> This civil liability is predicated on the fact that the official or employee concerned acted with bad faith, malice, or gross negligence in the performance of his official duties in accordance with Section 38, Chapter 9, Book I of the Administrative Code.<sup>65</sup>

Applying Rule 2(b) of the Rules on Return, this Court affirms Paguio, et al.'s solidary liability to return the disallowed amounts. Paguio, Abarquez, Pabilonia, Velasco, Capistrano, and Bombay violated the provisions of the 2009 and 2010 General Appropriations Acts when they granted and approved the payment of Extraordinary and Miscellaneous Expenses. As already discussed, there is simply no legal basis for the said expenditure. Even Circular No. 2006-01, which Paguio, et al. fervently invoke, expressly confines the grant of the said allowance to the extent allowed by a government-owned and controlled corporation's respective charter or the General Appropriations Act, neither of which explicitly extended such allotment to Pagsanjan Water District or its General Manager.

Comparably, Aguilar is likewise solidarily liable as head of the division responsible for the pre-audit of the disbursement and certifying that the

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<sup>63</sup> Id.

<sup>64</sup> Id., citing, otherwise known as the Administrative Code of 1987, Section 43, Book VI of Executive Order No. 292, Chapter 5.

<sup>65</sup> Id.

supporting documents in relation to the payments of Extraordinary and Miscellaneous Expenses were complete and proper. That the said payments were not made through reimbursements and were paid on the basis of certifications violated the auditing guidelines set by Circular No. 2006-01. While Circular No. 89-300 allowed for certifications in lieu of receipts, as previously mentioned, the same issuance clearly and unequivocally states that the guidelines therein apply only to National Government Agencies.

Taking into account the palpable contravention of prevailing laws as well as the Commission on Audit rules and regulations, no badge of good faith<sup>66</sup> may be considered to mitigate or condone Paguio, et al.'s liability. The blatant disregard of case laws and mandates of the Commission amounts to gross negligence which prevails over the bare-faced defense of good faith.<sup>67</sup>

Notably, in *TransCo*, this Court did not ascribe bad faith on the part of the public officials therein on their reliance on Circular No. 89-300, as a judicial interpretation of the given rules on the application of the said circular and what constitutes "other documents evidencing disbursements" were only made in *Espinás* in 2014.<sup>68</sup> We are disinclined to make a similar exception in the instant case. It must be emphasized that here, unlike the expenditure in *TransCo*, the grant of Extraordinary and Miscellaneous Expenses itself, in addition to the procedural irregularity, has no support in law to begin with.

Neither can Paguio invoke good faith to sidestep the return of the disallowed sum he received. While Paguio submits that he merely received the payments believing he was entitled thereto, nowhere in the petition did he refute the finding of the Commission that he himself approved the same expenditures. Notwithstanding, as correctly noted by the Commission Proper, the liability to return the disallowed amount is grounded on the principle of *solutio indebiti*.

With respect to a public officer held accountable in their capacity as payee-recipient, and not as approving or certifying officer, the liability is regarded from the viewpoint of unjust enrichment and the principle of *solutio indebiti* under a civil law context, instead of the Administrative Code.<sup>69</sup>

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<sup>66</sup> (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality. Id.

<sup>67</sup> *Tetangco, et al. v. Commission on Audit*, 810 Phil. 459, 466 (2017), citing *Technical Education and Skills Development Authority v. Commission on Audit Chairperson Tan*, 729 Phil. 60, 76 (2014).

<sup>68</sup> *Espinás v. Commission on Audit*, *supra* note 57.

<sup>69</sup> *Abellanos v. Commission on Audit*, G.R. No. 185806, November 17, 2020 (Resolution).

Proceeding from such civil obligation, the good faith of a payee is inconsequential.<sup>70</sup>

Hence, the prevailing directive is that recipients, whether or not they have acted in good faith, are bound to return the amount disallowed in audit and received by them.<sup>71</sup> The rule admits of exceptions: (1) if they are able to show that the amounts they received were genuinely given in consideration of services rendered; or (2) where this Court excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions.<sup>72</sup>

By his arguments, Paguio seems to dwell on the first exception. However, the mere invocation that one deserved the grant awarded to them by reason of their office does not *ipso facto* imply that the amount was given in consideration of services rendered within the purview of the cited exemption.

In *Abellanosa v. Commission on Audit*,<sup>73</sup> this Court expanded on the Rules on Return to include requirements where the exception under Rule 2(c) may apply:

As a supplement to the Madera Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, i.e., amounts genuinely given in consideration of services rendered, the following requisites must concur:

- (a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and
- (b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.<sup>74</sup>

Neither of the circumstances above are present in the instant case. The payments of Extraordinary and Miscellaneous Expenses to Paguio had no clear basis in law and were not disallowed due to mere irregularities. Also, except for self-serving statements, Paguio, et al. failed to show that the said payments had a clear, direct, and reasonable connection to the performance of Paguio's functions as general manager of Pagsanjan Water District.

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<sup>70</sup> Id.

<sup>71</sup> *Madera v. Commission on Audit*, *supra* note 62.

<sup>72</sup> Id.

<sup>73</sup> *Supra* note 68.

<sup>74</sup> Id.



Additionally, as ably pointed out by the Honorable Justice Rodil v. Zalameda, this Court may consider the duration of time between the receipt of benefits and the issuance of the notice of disallowance or notice indicating its possible illegality in excusing the refund of disallowed expenditures. Through *Cagayan de Oro Water District v. Commission on Audit*,<sup>75</sup> (*Cagayan de Oro Water District*) this Court pronounced:

[T]he following considerations in determining whether or not a refund can be excused under Rule 2d of *Madera*:

x x x x

2. The Court shall consider the lapse of time between the receipt of the allowances and benefits, and the issuance of the notice of disallowance or any similar notice indicating its possible illegality or irregularity. Absent any circumstances the Court may deem sufficient, the lapse of three (3) years without any such notice shall be sufficient to excuse recipients from making a refund.

However, this three (3) year period rule shall not apply in favor of persons found to have actively participated in fraudulent transactions, i.e., those found culpable in Special Audits or Fraud Audits conducted by the COA.

In *Cagayan de Oro Water District*, this Court acknowledged that after the lapse of a significant period of time absent any notice of possible illegality or irregularity, recipients of allowances or benefits may have already spent such amounts received by them in good faith. Thus, it would be inequitable to recipients, particularly rank-and-file employees, to require the return of the disallowed amounts.<sup>76</sup> In the same case, this Court recognized three years as a reasonable period for recipients to be notified of any illegality or irregularity in the allowance or benefits received. The lapse of this period, therefore, is sufficient to excuse recipients from refunding the amounts received on the basis of equity and fairness. However, those recipients with notice of a possible illegality or irregularity within the 3-year period are deemed to be forewarned that they may be required to return any disallowed amount. As such, those who choose to spend the amounts received do so at their own risk and they are not excused from refunding the allowances and benefits eventually disallowed in audit.<sup>77</sup>

Here, the Commission issued the subject Notice of Disallowance on May 10, 2012, disallowing the 2009 and 2010 monthly payments of Extraordinary and Miscellaneous Expenses to Paguio. Nevertheless, a review of the records shows that as early as June 2, 2011, the Commission issued Audit Observation Memorandum No. 2011-100-005 (09 & 10)<sup>78</sup> informing

<sup>75</sup> G.R. No. 213789, April 27, 2021.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Rollo*, pp. 52–55.

petitioners Alex C. Paguio and Angeline R. Aguilar that the payments in question lack legal basis and were irregularly paid.<sup>79</sup> The same issuance was acknowledged by the petitioners in their Appeal Memorandum before the Commission.<sup>80</sup> Proceeding from the foregoing, Paguio, et al. were sufficiently notified within the three-year period from the payments of the questioned allowance of the illegality and irregularity of the same.

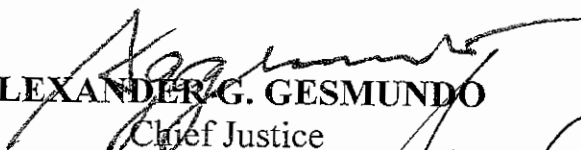
Consequently, the return of the disallowed payments cannot be excused.

**WHEREFORE**, premises considered, the instant petition is hereby **DISMISSED**. The Commission on Audit Decision No. 2018-187, dated January 29, 2018 is **AFFIRMED**.

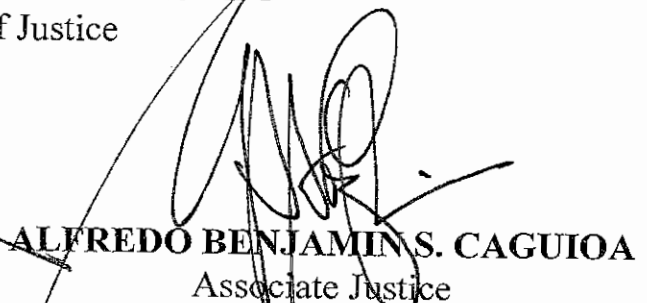
**SO ORDERED.**


  
**JHOSEP Y. LOPEZ**  
Associate Justice

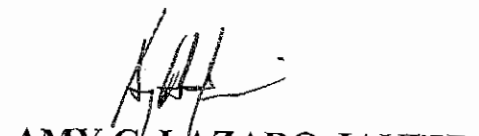
**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

  
**ALFREDO BENJAMINS S. CAGUIOA**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

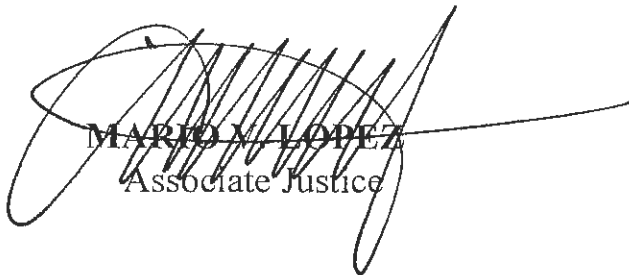
<sup>79</sup> Id.

<sup>80</sup> Id. at 38-39.



**HENRI JEAN PAUL B. INTING**  
Associate Justice

On official leave  
**RODIL V. ZALAMEDA**  
Associate Justice

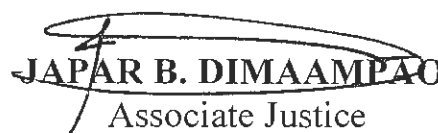


**MARIO N. LOPEZ**  
Associate Justice

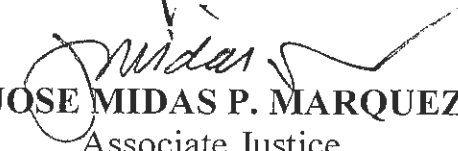
On official business  
**SAMUEL H. GAERLAN**  
Associate Justice



**RICARDO R. ROSARIO**  
Associate Justice



**JAPAR B. DIMAAMPAO**  
Associate Justice



**JOSE MIDAS P. MARQUEZ**  
Associate Justice

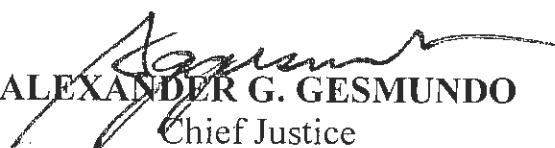


**ANTONIO T. KHO, JR.**  
Associate Justice

On official business  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ALEXANDER G. GESMUNDO**  
Chief Justice

